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May 7, 1996

Mr. William F. Caton, Acting Secretary
Federal Communications Commission
Room 222
1919 M Street, N.W.
Washington, D.C. 20554

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RECEIVED
May 7 '96

**RE: Reply Comments of Motorola Satellite Communications, Inc.
and Iridium, U.S., L.P. in Response to the Commission's
Notice of Proposed Rulemaking in the Matter of a
Federal-State Joint Board on Universal Service
(CC Docket No. 96-45)**

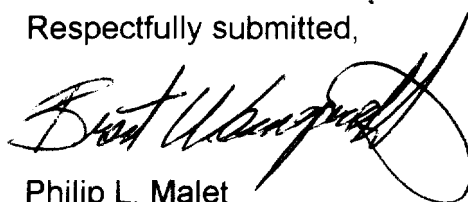
Dear Mr. Caton:

On behalf of Motorola Satellite Communications, Inc. and Iridium, U.S., L.P. (Iridium North America) please find enclosed for filing an original and six (6) copies of their reply comments in response to the Commission's rule making proceeding in the above-captioned matter.

We request that you place these comments in the appropriate public file and forward a copy of these comments to the Joint Board for its consideration.

Please date stamp and return our copy marked "Duplicate Original" to the messenger. If there are any questions concerning this filing, please do not hesitate to contact the undersigned.

Respectfully submitted,



Philip L. Malet
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Counsel for Motorola Satellite
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Iridium, U.S., L.P.

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Enclosure

ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)
)
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Federal-State Joint Board on)
Universal Service)
_____)

CC Docket No. 96-45

**REPLY COMMENTS OF MOTOROLA AND IRIDIUM
NORTH AMERICA**

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Inc.
Iridium, U.S., L.P.**

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May 7, 1996

SUMMARY

Motorola Satellite Communications, Inc. ("Motorola") and Iridium, U.S., L.P. ("Iridium North America" or collectively "MSC/INA") submit these reply comments to the Federal-State Joint Board on Universal Service in the above-captioned proceeding.

Collectively, these companies will be responsible for the bulk distribution of space segment capacity to service providers in the United States and Canada who, in turn, will provide IRIDIUM Mobile Satellite Services ("MSS") to the general public.

Motorola and Iridium North America strongly support the universal service goals established by Congress and the Commission. However, Congress has allowed the FCC to exclude bulk providers of space segment capacity from universal service contribution obligations through its definitions of "telecommunications carrier" and "telecommunications services." These definitions continue the statutory scheme first created by Congress in 1993 that permits the FCC to determine whether providers of fixed satellite or mobile satellite space segment should be subject to CMRS and common carrier regulatory treatment. The definitions of "telecommunications service" and "common carrier" service are synonymous and permit the Commission to find that bulk space segment capacity providers are not telecommunications carriers or common carriers.

The FCC has repeatedly concluded, both in the context of its Big and Little LEO rulemaking proceedings and in its licensing decisions, that it would extend non-common carrier treatment to "any entity that sells or leases space segment

capacity, to the extent that they are not providing CMRS directly to end users."^{1/} The Commission has expressly recognized that the IRIDIUM System will be marketed through a wholesale supplier of satellite transmission capacity to service providers through U.S. gateways and that this does not constitute common carriage or a CMRS offering.^{2/}

While Congress also granted the Commission the discretion to impose universal service contribution obligations on "providers of interstate telecommunications," the Joint Board should recommend that such action is not in the public interest. The Commission need not impose universal service contribution obligations upon bulk space segment providers in order to preserve and advance its universal service policies. It can readily impose these obligations on MSS service providers that will be providing service directly to the public and thus qualify as telecommunications carriers or providers of telecommunications subject to Section 254(d)'s contribution requirements.

Motorola and Iridium North America, therefore, urge that the Joint Board recommend to the Commission that providers of Fixed Satellite and Mobile Satellite Service bulk space segment capacity should not be subject to the universal service contribution obligations of Section 254 of the Telecommunications Act of 1996.

^{1/} Implementation of Sections 3(n) and 332 of the Communications Act's Regulatory Treatment of Mobile Services, Second Report and Order, 9 FCC Rcd 1411, 1456-1457 (1994).

^{2/} Motorola Satellite Communications, Inc., 10 FCC Rcd 2268, 2272 (Int'l Bureau 1995).

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**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of

**Federal-State Joint Board on
Universal Service**

CC Docket No. 96-45

REPLY COMMENTS OF MOTOROLA AND IRIDIUM NORTH AMERICA

Motorola Satellite Communications, Inc. ("Motorola") and Iridium, U.S., L.P. ("Iridium North America" or collectively "MSC/INA") submit these reply comments in the above-captioned proceeding. Motorola holds the space system license for the IRIDIUM[®] System, a global personal communications satellite system.^{1/} Iridium North America is an IRIDIUM System authorized Gateway Operator that will be responsible for the bulk distribution of space segment capacity to service providers in the United States who, in turn, will provide IRIDIUM communications services to the general public.

Motorola and Iridium North America strongly support the universal service goals established by Congress and the Commission. MSS service providers who provide service directly to the general public should contribute to the universal service fund. However, Congress clearly intended to exclude the wholesale provision of satellite space segment capacity from this contribution obligation.

^{1/} Motorola Satellite Communications, Inc., 10 FCC Rcd 2268 (Int'l Bureau 1995).

Several of the initial commenters in this proceeding have suggested that all satellite carriers be required to contribute to any universal service fund support mechanisms recommended by the Joint Board and ultimately adopted by the Commission. Bulk providers of either fixed satellite or mobile satellite space segment capacity are not "telecommunications carriers" nor do they provide "telecommunications services" in accordance with Section 254(d) of the Telecommunications Act of 1996.^{2/} This treatment is consistent with Congress' previous determination that bulk space segment providers need not be treated as CMRS providers or common carriers under Section 332(c)(5) of the Communications Act of 1934, as amended, as well as numerous Commission decisions implementing this statutory language.

MSC/INA is not a "provider of telecommunications" as defined by the 1996 Act that may be required to contribute to universal service mechanisms at the discretion of the Commission. However the public interest does not require that the Commission impose universal service contribution obligations upon bulk providers of space segment capacity since authorized IRIDIUM System service providers that offer service directly to the public will qualify as either telecommunications carriers or providers of telecommunications subject to Section 254(d)'s contribution requirements.

^{2/} Section 254(d) of the Telecommunications Act of 1996 ("1996 Act"), Pub. L. No. 104-104, 110 Stat. 56 (1996); to be codified at 47 U.S.C. §254(d).

I. BACKGROUND

It is important that the Joint Board understand how MSC/INA and other bulk distributors of space segment capacity intend to operate so that it may place a claim for an exclusion from universal service obligations in the proper perspective. Motorola has been licensed to construct, launch and operate a constellation of 66 low-Earth orbit ("LEO") satellites in the "Big LEO" MSS Service called the IRIDIUM® System. The system will provide two-way voice and data communications between hand-held mobile terminals virtually anywhere in the world and between such terminals and the Public Switched Telephone Network (PSTN).^{3/} As the Commission has recognized, Motorola does not plan to provide these services directly to the public.

Motorola will be a wholesale supplier of Iridium's transmission capacity to network operators or service providers through U.S. gateways. These entities may provide services to end users or sell capacity in bulk to other service providers, or both.^{4/}

In the United States, Iridium North America, a partnership of Motorola, Inc., Sprint Corporation and Bell Communications Enterprises, Inc., will be the exclusive IRIDIUM® System Gateway operator in both the United States and Canada. This Gateway will provide the interface between the satellite constellation and terrestrial communications systems. Iridium North America will, in turn, sell space segment capacity in bulk to unaffiliated service providers. As such, it will be

^{3/} Motorola Satellite Communications, 10 FCC Rcd 2268 (Int'l Bureau 1995).

^{4/} Id. at 2268.

responsible for contracting with these service providers who will purchase the right to sell bulk IRIDIUM services to the general public.

The IRIDIUM service providers represent the primary interface with the subscribing public. MSC/INA expects that many existing cellular (or other CMRS) carriers will act in this capacity and offer IRIDIUM services as a complement to their existing cellular services. These service providers will also be the collection point for charges for IRIDIUM® System use by the public, with revenues being shared with the IRIDIUM® System space segment provider, the authorized Gateway operator (Iridium North America) and the various service providers.

II. BULK PROVIDERS OF SATELLITE SPACE SEGMENT CAPACITY ARE NOT "TELECOMMUNICATIONS CARRIERS" SUBJECT TO THE UNIVERSAL SERVICE CONTRIBUTION REQUIREMENTS OF THE 1996 TELECOMMUNICATIONS ACT

Several of the initial commenters in this proceeding argue that universal service obligations should extend to satellite carriers because of their status as "telecommunications carriers."^{5/} These comments ignore the clear intent of Congress to exclude fixed satellite and mobile satellite service providers from this definition to the extent these providers do not provide service directly to the public. Exclusion of these bulk satellite service providers is wholly consistent with their current treatment under Section 332 of the Communications Act. Nothing in the statutory language or the legislative history reflects a congressional intent to distinguish or limit the Commission's

^{5/} See, e.g., Comments of Ameritech at 23 n.35; Comments of the NYNEX Telephone Companies at 23-24.

current discretion to exclude bulk space segment providers from common carrier status or to now exclude these providers from treatment as telecommunications carriers. The comments also ignore several FCC decisions that treat the bulk -- or wholesale -- provision of satellite space segment capacity as private carriage.

A. Congress Has Specifically Excluded Bulk Space Segment Providers Like Motorola and Iridium North America From Its Definition of "Telecommunications Provider" and "Telecommunications Services"

Congress determined that "every telecommunications carrier provid[ing] interstate telecommunications services" would be required to contribute to universal service support mechanisms.^{6/} The statutory definitions of these terms in the 1996 Act indicate that the provision of wholesale satellite space segment capacity is excluded from such obligations.

In defining "telecommunications carrier," Congress included language that reflects a clear intent to exclude satellite space segment providers:

"A telecommunications carrier shall be treated as a common carrier under this Act only to the extent that it is engaged in providing telecommunications services, except that the Commission shall determine whether the provision of fixed and mobile satellite service shall be treated as common carriage."^{7/}

The statutory definition of "telecommunications service" further demonstrates that Congress intended to exclude wholesale communications offerings like those to be offered by MSC/INA.

^{6/} Section 254(d) of the 1996 Act.

^{7/} Section 3(49) of the 1996 Act (emphasis added).

The term "telecommunications service" means the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used."^{8/}

Congress apparently intended these statutory definitions to be synonymous with the generally accepted definition of common carriage, and authorized the Commission to continue determining on a case-by-case basis whether providers of bulk satellite space segment capacity are subject to common carrier regulation.^{9/} When the Commission concludes that a bulk provider of satellite space segment capacity is not a common carrier, this decision necessarily encompasses a finding that the provider is not a telecommunications carrier nor providing telecommunications services.

Nothing in the 1996 Act or its legislative history shows a congressional intent to make a distinction between "telecommunications service" and "common

^{8/} Section 3(51) of the 1996 Act (emphasis added).

^{9/} See, NARUC I, 525 F.2d 630, 641 (D.C. Cir. 1976), where the Court defined an essential element of common carriage as an undertaking by a carrier "to carry for all people indifferently." The Court alluded to the FCC's definition of common carriage with approval.

[T]he fundamental concept of a communications common carrier is that such a carrier makes a public offering to provide, for hire, facilities by wire or radio whereby all members of the public who choose to employ such facilities may communicate or transmit intelligence of their own design and choosing.

NARUC I at 641 n.58.

See also, NARUC II, 533 F.2d 601, 608-609 (D.C. Cir. 1976) (A communications common carrier holds itself out indifferently to serve all potential users and these users transmit intelligence of their own choosing).

carriage." In fact, the statutory definition of "telecommunications service" is completely consistent with the currently-accepted meaning of common carriage.

Moreover, the 1996 Act's legislative history plainly reflects this consistency. The House explanatory language in the Conference Report defines "telecommunications service" as "services and facilities offered on a common carrier basis...."^{10/} The Senate explanatory language, ultimately adopted by the Conference Committee, first reiterates that the new statutory definition of "telecommunications carrier" is intended to amend the Communications Act "to explicitly provide that a 'telecommunications carrier' shall be treated as a common carrier,... but only to the extent it is engaged in providing telecommunications services."^{11/} The Senate language then adds context to the new statutory definition of "telecommunications service" by noting that this definition is "intended to include commercial mobile service ("CMS") ... to the extent [it is] offered to the public or to such classes of users as to be effectively available to the public."^{12/}

As discussed more fully below, these definitions are consistent with the existing statutory scheme under Section 332 of the Communications Act that allows the Commission the discretion to exempt providers of bulk MSS space segment from CMS or common carrier treatment. The Joint Board should therefore recommend that the Commission extend its statutory discretion to exclude bulk satellite space segment providers from treatment as "telecommunications carriers."

^{10/} H.R. No. 458, 104th Cong., 2nd Sess. 115 (1996).

^{11/} Id. at 114.

^{12/} Id.

B. A Determination That Bulk Providers Of Satellite Space Segment Capacity Are Not Telecommunications Carriers Is Consistent With Congress' Provision For Such Treatment Under Section 332(c)(5) Of The Communications Act

Since 1993, Congress has specifically authorized the Commission to determine whether satellite space segment providers are not common carriers to the extent they provide space segment capacity to CMRS providers. The 1996 Act does not diminish the Commission's discretion to make these determinations nor require the Commission to revise its previous decisions.

Section 332 of the Communications Act established a new regulatory regime for for-profit providers of mobile services to the public -- the Commercial Mobile Service ("CMS" or "CMRS") -- and required that such providers be treated as common carriers.^{13/} The Act defines CMRS as "any mobile service that is provided for profit and makes interconnected service available to the public or to such classes of eligible users as to be available to a substantial portion of the public".^{14/}

However, at Section 332(c)(5) of the Act, Congress specifically provided the Commission with broad discretion to exempt providers of space segment capacity from CMRS or common carrier treatment.

Nothing in this section shall prohibit the Commission from continuing to determine whether the provision of space segment capacity by satellite systems to providers of

^{13/} 47 U.S.C. § 332(c).

^{14/} 47 U.S.C. § 332(d).

commercial mobile services shall be treated as common carriage.^{15/}

The Commission has concluded in its CMRS and LEO MSS rulemakings that bulk satellite space segment providers need not be treated as common carriers. Moreover, the Commission has concluded that MSS providers that choose to provide bulk space segment capacity to CMRS providers should not be treated as CMRS or common carriers. Most significantly, the Commission has made a specific finding to this effect for the IRIDIUM System.

First, in implementing Section 332(c)(5) of the Communications Act, the Commission concluded that it would extend non-common carrier treatment to "any entity that sells or leases space segment capacity, to the extent that they are not providing CMRS directly to end users."^{16/} At Section 20.9(a)(10) of its Rules, the Commission permitted this treatment for both the space station provider of bulk space segment capacity and other entities in the chain of distribution.

MSS will be treated as common carriage service and regulated as CMRS if it involves the provision of CMRS (by licensees or resellers) directly to end users, except that mobile satellite licensees and other entities that sell or lease space segment capacity, to the extent that it does not provide CMRS directly to end users, may provide space

^{15/} 47 U.S.C. § 332(c)(5). The legislative history reflects a congressional intent to allow the FCC to continue its individualized determinations as to whether the provision of space segment capacity to providers of CMRS is common carriage. Congress noted, however, that "the provision of space segment capacity directly to users of commercial mobile services shall be treated as common carriage." Conference Report to the Omnibus Budget Reconciliation Act of 1993, H. R. Rep. No. 213, 103rd Cong., 1st Sess. 494 (1993) reprinted in 1993 U.S.C C.A.N. 1088, 1183.

^{16/} Implementation of Sections 3(n) and 332 of the Communications Act's Regulatory Treatment of Mobile Services, Second Report and Order. 9 FCC Rcd 1411, 1456-1457 (1994) (emphasis added).

segment capacity to CMRS providers on a non-common carrier basis, if so authorized by the Commission.^{17/}

The Commission then applied this rule and its interpretation of Section 332(c)(5) of the Communications Act in the context of its MSS policies. In its Big LEO Report and Order, the Commission concluded that it may exercise its discretion to treat as non-common carriers (or private carriers) Big LEO space station licensees who offer space segment capacity to resellers or other entities that then offer CMRS to end users.^{18/} In the context of non-voice, non-geostationary MSS space station licensees ("Little LEOs"), the Commission also concluded that it would allow these licensees to provide system access to CMRS providers on a non-common carrier basis.^{19/}

The Commission has applied its Big LEO policies to the IRIDIUM System and other Big LEO MSS licensees intending to offer space segment capacity and found that they will not be providing CMRS or common carrier services. In its authorization to Motorola for the IRIDIUM® System, the Commission recognized that Motorola did not plan to provide space segment capacity directly to end users, and therefore need not

^{17/} 47 C.F.R. § 20.9(a)(10) (emphasis added).

^{18/} Amendment of the Commission's Rules to Establish Rules as Policies Pertaining to a Mobile Satellite Service in the 1610-1626.5/2483.5-2500 MHz Frequency Bands, Report and Order, 9 FCC Rcd 5936, 6002 (1994). In addition to its interpretation of the statutory CMRS provisions, the Commission relied extensively on the analysis of the NARUC I Court. Id. at 6002-6004.

^{19/} Amendment of the Commission's Rules to Establish Rules and Policies Pertaining to a Non-Voice, Non-Geostationary Mobile-Satellite Service, Report and Order, 8 FCC Rcd. 8450, 8456 (1993). The Commission later authorized Orbcomm to sell bulk space segment to resellers on a non-common carrier basis. Orbital Communications Corporation, 9 FCC Rcd 6476 (1994).

operate as a common carrier.^{20/} The Commission based this determination on its discretion under Section 332(c)(5) of the Communications Act to treat as private carriers Big LEO space station licensees that will offer space segment capacity to resellers or others who then would offer CMRS to the public.^{21/} Similarly, the Commission has determined that TRW and Loral/Qualcomm may offer MSS space segment capacity on a non-common carrier basis.^{22/}

Most recently, the Commission provided Fixed-Satellite Service (FSS) licensees total flexibility to sell or lease transponder capacity on a common carrier or non-common carrier basis. The Commission concluded that an FSS licensee must operate on a common carrier basis only if it chooses to make indiscriminate offerings to the public under the NARUC I criteria.^{23/}

These repeated Commission grants of non-common carrier treatment to bulk providers of space segment capacity reflect the clear intent of Congress to treat such providers as private carriers.^{24/} The Joint Board should recommend to the

^{20/} Motorola Satellite Communications, Inc., 10 FCC Rcd 2268, 2272 (Int'l Bureau 1995).

^{21/} Id.

^{22/} TRW, 10 FCC Rcd 2263, 2266 (Int'l Bureau 1995); Loral/Qualcomm, 10 FCC Rcd 2333, 2336 (Int'l Bureau 1995).

^{23/} Amendment of the Commission's Regulatory Policies Governing Domestic Fixed Satellites and Separate International Satellite Systems, Report and Order, FCC 96-14, ¶ 49 (January 22, 1996).

^{24/} Just last month, in the context of its Local Competition rulemaking proceeding, the Commission again indicated that it would continue to make case-by-case decisions as to whether the provision of MSS is CMRS or Private Mobile Radio Service.

(continued ...)

Commission that it similarly find that bulk space segment providers are neither "telecommunications carriers" nor providing "telecommunication services" as defined in Section 254(d) of the 1996 Act.

III. REQUIRING BULK PROVIDERS OF SATELLITE SPACE SEGMENT CAPACITY TO CONTRIBUTE TO UNIVERSAL SERVICE MECHANISMS IS NOT IN THE PUBLIC INTEREST

Motorola and Iridium North America and other providers of space segment capacity do not meet the statutory definition of a "telecommunications carrier" providing "telecommunications services" and therefore should not be subject to the universal service contribution requirements. Nevertheless, new Section 254(d) of the 1996 Act also grants the Commission authority to impose universal service contribution requirements upon "any other provider of interstate telecommunications" if the public interest requires.

The public interest would not be served by the imposition of this obligation on providers of bulk space segment capacity. These entities are not "interstate providers of telecommunications" as defined by the 1996 Act. However, the Commission is assured of a fair and equitable contribution from space-based MSS businesses through the local service provider(s) who ultimately will offer MSS directly to the general public.

^{24/} (... continued)

Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, Notice of Proposed Rulemaking, CC Docket No. 96-98, FCC 96-182, ¶ 247 (released April 19, 1996)

A. Bulk Space Segment Capacity Providers Like Motorola and Iridium North America Are Not "Providers of Interstate Telecommunications" As Defined by the 1996 Telecommunications Act

The provision of bulk space segment capacity to authorized service providers does not constitute the provision of "telecommunications" as defined by the 1996 Act. The 1996 Act defines telecommunications as "the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received."^{25/} The legislative history adds that this information includes voice, data, image, graphics and video.^{26/} As a bulk -- or wholesale -- provider of space segment capacity, MSC/INA will not offer MSS end users these options. Rather, it will be the local service providers who will purchase and resell bulk capacity to the general public that meet this definition. The service provider will direct the transmission of the user-supplied information to points specified by the user. MSC/INA will simply provide bulk access to the satellite space segment to by these service providers and interconnect them with the Public Switched Telephone Network.

B. MSS Service Providers Will Qualify as Telecommunications Carriers Subject to Universal Service Obligations

The Commission can be assured that MSS providers will pay their fair share of any universal service contributions. While MSS space segment providers do not meet the new statutory definitions of "telecommunications carriers" or "providers of

^{25/} Section 3(48) of the 1996 Act.

^{26/} H.R. Rep. No. 458, 104th Cong., 2nd Sess. 114 (1996).

telecommunications," the local MSS service providers will remain subject to Section 254(d) of the 1996 Act.

As MSC/INA has previously noted, it and other MSS space segment providers do not intend to provide service directly to the public. As such, they are not telecommunications carriers, or providers of telecommunications or offering a telecommunications (or common carrier) service. In the case of MSC/INA, service to the public in the United States will be provided only through authorized service providers such as cellular entities under contract with Iridium North America to purchase bulk space segment and offer it to the public. The Commission recognized in its Big LEO Report and Order that when MSS services are ultimately offered to the public they would be subject to CMRS and common carrier regulation.^{27/} These CMRS providers will also be subject to Section 254(d) as telecommunications providers or telecommunications carriers. Like other interstate providers of CMRS, they will fully contribute to any universal service funding mechanisms ultimately adopted by the Commission.

IV. CONCLUSION

The Joint Board should recommend to the Commission that providers of FSS and MSS bulk space segment capacity be excluded from the universal service contribution obligations established by the Telecommunications Act of 1996. This recommendation would be consistent with the definitions of entities subject to universal service obligations as set forth at Sections 3 and 254(d) of the 1996 Act as well as the

^{27/} Big LEO Report and Order at 6002. See, also, 47 C.F.R. §20.9(a)(10).

existing statutory scheme of Section 332(c)(5) of the Communications Act. FSS and MSS businesses will contribute to any universal service funding mechanism adopted by the Commission via the CMRS or common carrier service providers that offer satellite services directly to the general public.

Respectfully submitted,

**MOTOROLA SATELLITE
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May 7, 1996

CERTIFICATE OF SERVICE

I, Brent H. Weingardt, do hereby certify that a copy of the foregoing
Reply Comments of Motorola, Inc. and Iridium U.S., L.P. has been sent, via first
class mail, postage prepaid, (or as otherwise indicated) on this 7th day of May, 1996 to
the following:

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